

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII**

PUBLIC UTILITIES
COMMISSION

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FILED

**In The Matter Of the Application Of
HAWAIIAN ELECTRIC COMPANY, INC.**

DOCKET NO. 03-0417

**for approval to commit funds in excess of
\$500,000 for Item Y48500, East Oahu
Transmission Project.**

**MEMORANDUM IN RESPONSE TO
MOTION TO INTERVENE BY CAROLYN H. WALTHER**

AND

CERTIFICATE OF SERVICE

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**MEMORANDUM IN RESPONSE TO
MOTION TO INTERVENE BY CAROLYN H. WALTHER**

This Memorandum is respectfully submitted by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") in response to the Motion to Intervene ("Motion") dated January 7, 2004 by Carolyn H. Walther ("Movant").

Movant, who is an individual who resides in Palolo, does not have to be made a party to this proceeding in order to have her concerns represented in this proceeding. Based on the Motion, Movant's concerns in this proceeding relate to (1) the need for the proposed project, (2) whether "the PUC may decide that the lines should go overhead", and (3) "Carolyn H. Walther's property and environmental interests".

HECO proposes that Movant be allowed to participate in the proceeding, without being allowed to intervene as a party, through the Consumer Advocate or another party, with respect to matters of interest to Movant as designated by the Commission. Movant's interests can be represented by other parties who oppose the project (presuming they are permitted to intervene), such as (1) Palolo Community Council ("Palolo CC"), which seeks to educate and inform the Commission regarding issues and concerns of Palolo residents (including property owners and

renters) and impacts to Palolo, and/or (2) Life of the Land (“LOL”), which is seeking intervention as an environmental and community action group representing environmental interests. In addition, Movant has not demonstrated how her participation will contribute to the development of a sound record in this docket, given the participation of organizations with similar interests and the opportunity to participate through those organizations.

I. INTERVENTION AS A PARTY

A. Introduction

The case cited by Movant does not grant Movant the status of a party to a Commission proceeding.¹ In addition, Movant cites Docket No. 7256 (in which the Commission granted late-filed motions to intervene, and ultimately approved HECO’s Waiau-CIP 138kV #1 & #2, Part 2, Transmission Lines project) as precedent. Motion, 1st and 2nd pages.² The Waiau-CIP case does not stand for the proposition that persons moving to intervene in Movant’s position are somehow entitled to the status of a party, and Movant has not cited any statute for that proposition.

Compare Hawaii Revised Statutes §269-51 (granting the Consumer Advocate the right to participate in Commission proceedings). Thus, the Motion is governed by the Commission’s Rules of Practice and Procedure regarding intervention.³

¹ Life of the Land v. Land Use Commission, 63 Haw. 166, 623 P.2nd 431 (1981), was a case involving standing to seek judicial relief with respect to agency action or rules, arising out of Land Use Commission decisions reclassifying parcels of land.

² The Motion does not contain page numbers. As a result, HECO will refer to the first page following the cover sheet to the Motion as the “1st page” and continuing such corresponding references numerically until the third page which contains the signature page to the body of the Motion.

³ The Motion (2nd page) refers to 3Point Consulting’s notes of comments from a HECO representative at a June 26, 2003 community meeting regarding the East Oahu Transmission Project. As stated in the 3Point Consulting report, HECO stated that “it had offered evidence of need in its presentation, and that a more detailed account of need would be reserved for the P.U.C.” 3Point Consulting’s East Oahu Transmission Project, Report on Public Input Collected in June and July 2003, dated September 2003 (Exhibit 11 to HECO’s application at 35). The HECO comments cited by Movant simply reflected that there would be an opportunity to intervene in that proceeding. In a subsequent meeting, the HECO representative responded to a question asking: “How can the public play a role in the PUC process?” The response, as summarized by 3Point Consulting, was that neither “Linda [Colburn, one of the facilitators] nor I can speak for the PUC but the

The general rule with respect to intervention, as stated by the Hawaii Supreme Court, is that intervention as a party to a proceeding before the Commission “is not a matter of right but is a matter resting within the sound discretion of the Commission.” In re Hawaiian Electric Co., 56 Haw. 260, 262, 535 P.2d 1102 (1975); see Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) at 8; Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) at 5-6.

The Commission exercises its discretion by determining whether or not a movant should be admitted as a party (or as a participant) in a proceeding. Hawaii Administrative Rules (“H.A.R.”) §6-61-55 (d) specifically states that: “Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.” Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993). In addition, the Commission needs to insure “the just, speedy and inexpensive determination of every proceeding,” which is the purpose of the Commission’s rules as stated in H.A.R. §6-61-1.

typical process in an evidentiary hearing is that the PUC will allow the Consumer Advocate to represent views of the public and will entertain interveners.” (3Point Consulting’s notes of the July 7, 2003 community meeting, which were included in Appendix 5 to Exhibit 11 (on a compact disc).)

A more complete statement of HECO’s position with respect to the determination of need by the Commission was set forth in the “Frequently Asked Questions” section of the web site that HECO established as part of its process of obtaining public input prior to selecting the proposed alternative for which approval is requested in HECO’s application. In responding to the question of who will determine need, HECO stated that:

Ultimately, the Public Utilities Commission (PUC) will decide the issue of need in a formal, highly technical regulatory proceeding. In making its determination, the PUC will consider the data, studies and expert analyses presented by HECO, by the Consumer Advocate, and by other parties to the proceeding, as well as the PUC’s own informed judgment as to the public interest.

In these quasi-judicial proceedings, the Consumer Advocate represents consumers of electric utility service, and has the power to obtain information through written data requests and verbal questions, and the right to present its own studies and expert analyses. Public interveners, whose interests are not adequately represented by other parties, may participate directly in the proceedings.

B. HECO's Position

Introduction

Based on the Motion (2nd page), Movant is “an individual landowner in the East Oahu area” who “is active in environmental, conservation, and community interests and organizations, and concerned about any and all environmental impacts”, and who resides in Palolo.⁴ Based on the Motion, Movant’s stated concerns in this proceeding relate to (1) the need for the proposed project (1st page), (2) whether “the PUC may decide that the line should go overhead” (1st page), and (3) “Carolyn H. Walther’s property and environmental interests”⁵ (2nd page). As stated above, HECO proposes that Movant be allowed to participate in the proceeding, without being allowed to intervene as a party, through the Consumer Advocate or another party, with respect to matters of interest to Movant as designated by the Commission.

Movant's Concerns

Movant contends that other parties do not represent Movant’s concerns, since the “existing parties” are HECO and the Consumer Advocate. Eight motions to intervene have been filed, however, and HECO generally has not opposed the motions by organizations to become parties. Movant’s concerns can be represented by other parties who oppose the project (presuming they are permitted to intervene), such as (1) Palolo CC, which contends that there is no proven need for the project, and seeks to educate and inform the Commission regarding issues and concerns of Palolo residents (including property owners and renters) and impacts to Palolo,

⁴ The Motion lists Movant’s address as a Pukele Avenue address, which is located in Palolo. The Motion (3rd page) also states that Movant will “help the Commission to be aware of property and environmental interests in the Palolo areas”

⁵ While the Motion states that “Carolyn H. Walther seeks only to protect her interests”, the Motion also refers to “Carolyn H. Walther’s and other concerned residents in her neighborhoods interests”, as well as “property and environmental interests in the Palolo areas” and “environmental impacts and property values in Palolo, as well as the larger community of East Oahu.” Motion, 2nd and 3rd pages.

and/or (2) LOL, which is seeking intervention as an environmental and community action group representing environmental interests. LOL contends that the project is not needed and, if any need develops, there are alternatives which are cheaper and have less environmental and cultural impacts.

Movant seeks to intervene in this proceeding as an individual. Movant does not allege that she has received authorization from other individuals or groups to represent their interests in this docket. Accordingly, even if she were allowed to intervene or participate, Movant could not speak on behalf of other individuals.

In a number of other dockets, the Commission has denied motions to intervene by individuals where the individuals' interests could be adequately represented by others in a proceeding. For example, in Docket No. 94-0345 (a general rate increase proceeding for Maui Electric Company, Limited), an individual (William Ellis, Jr., proceeding on a pro se basis) filed a motion to intervene as a party, and attempted to distinguish his interest in the proceeding from that of the general public on the basis that he was a senior citizen. In denying the motion, the Commission found as follows:

The commission finds that Ellis' allegations do not establish sufficient grounds to permit him to intervene in this docket. Although Ellis is a senior citizen, he seeks to intervene in this proceeding as an individual ratepayer. Ellis has not received authorization from other senior citizen individuals or groups to represent their interests in this docket; thus, even if he were allowed to intervene or participate, Ellis could not speak on behalf of other senior citizen ratepayers on the island of Maui or in Maui county. As an individual senior citizen ratepayer, Ellis' interests can be adequately represented by the Consumer Advocate. Accordingly, we deny Ellis' motion to intervene and encourage him to work with the Consumer Advocate in this proceeding.

Re Maui Electric Co., Docket No. 94-0345, Order No. 13964 (June 20, 1995) at 4.

In Docket No. 7259, an integrated resource plan proceeding for Hawaii Electric Light Company, Inc. (“HELCO”), an individual (Brad Hauser, also proceeding on a pro se basis), attempted to distinguish his interest from that of the general public based on his participation in HELCO’s integrated resource planning advisory group process. The Commission denied the motion, and the individual’s motion for reconsideration. See Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993), recon. den’d, Order No. 12951 (December 23, 1996). (At the same time, the Commission permitted seven organizations and/or entities to intervene as parties in addition to HELCO and the Consumer Advocate.)

In addition, a brief comment on one point in the Motion is warranted. The Motion refers to “visual impacts on significant view-planes . . . and impacts on property values created by overhead transmission lines & the disruption to the neighborhood areas affected.” The Motion also alleges that “HECO has suggested a number of different alignments and options, and may expand those options in this docket.” Motion, 2nd page (underscoring added). HECO notes that its proposed project involves the installation of new underground 46 kV lines, and that the alternatives presented to the public for community input involved only underground lines. HECO’s non-response to other contentions in the Motion should not be misconstrued as agreement with or acceptance of the accuracy of such contentions.

Other Considerations

With regard to how Movant’s participation in this docket could assist in the development of a sound record, Movant has not demonstrated how her participation will contribute to the development of a sound record in this docket, given the participation of organizations with similar interests and the opportunity to participate through those organizations.

Pro se participation by Movant, coupled with the absence of experience before this

Commission in a similar type of proceeding, could unduly delay the proceeding without contributing to the development of a sound record. HECO is concerned that the participation of numerous parties representing the same interests in a proceeding (particularly where some of the parties are participating on a pro se basis) could delay the proceeding (through repetitious questioning of witnesses, etc.), without contributing to the development of the record.

II. LIMITED PARTICIPATION WITHOUT INTERVENTION

The Commission in the past has denied intervenor status, but granted participation status pursuant to H.A.R. §6-61-56, and allowed the limited participation of persons seeking intervention on specific issues, when such persons' interests may not be adequately represented by existing parties, or when such persons may have special knowledge or expertise.

In Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) ("Order No. 10399"), the Commission denied the amended application to intervene of Puna Community Council, Inc. ("Puna CC") in a HELCO rate case, but granted Puna CC participation status, subject to the conditions that (1) Puna CC's participation would be "limited to the issue of the specific impact of HELCO's proposed rate structure on the ratepayers of the Puna district who are in the lower income brackets", and (2) "[Puna CC] shall participate in the proceedings and present relevant documents and materials and testimony of witnesses through the Consumer Advocate." Order No. 10399, pages 5-6. (Puna CC had sought to intervene on the basis that HELCO's proposal to increase its rates would seriously impact the ratepayers of the Puna district. Puna CC's only attempt to distinguish itself from the general public was the allegation that HELCO's proposed rate increase would seriously impact Puna rate payers because most of them were in the lower income brackets and tend to use less power. Puna CC also

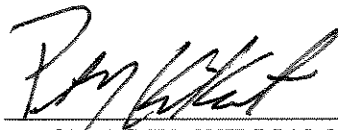
argued that the Consumer Advocate would not adequately represent the interests of the Puna district ratepayers.)

HECO proposes that Movant be allowed to participate in the proceeding, without being allowed to intervene as a party, through the Consumer Advocate or another party, with respect to matters of interest to Movant as designated by the Commission. As previously discussed, Movant's concerns can be represented by other parties who oppose the project (presuming they are permitted to intervene), such as Palolo CC and/or LOL.

III. CONCLUSION

Based on the foregoing, HECO proposes that Movant be allowed to participate in the proceeding, without being allowed to intervene as a party, through the Consumer Advocate or another party, with respect to matters of interest to Movant as designated by the Commission.

DATED: Honolulu, Hawaii, January 16, 2004.



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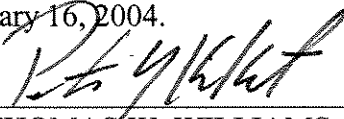
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing **MEMORANDUM IN RESPONSE TO MOTION TO INTERVENE BY CAROLYN H. WALTHER**, together with this Certificate of Service, by making personal delivery or by causing a copy hereof to be mailed, postage prepaid and properly addressed, to each such party:

Division of Consumer Advocacy (2)
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DATED: Honolulu, Hawaii January 16, 2004.



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